

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 105 OF 2013

(Arising from the Ruling of the District Court of Kinondoni in Civil Cause No. 14 of 2011)

JOHN BOAZ.....APPELLANT

V.

TELESIA MAZWAZWA.....1ST RESPONDENT

GEORGE MACHA.....2ND RESPONDENT

RASHID MMBONDE.....3RD RESPONDENT

JOSEPH SEMPOLI.....4TH RESPONDENT

LUCY WADU.....5TH RESPONDENT

MBUGI MAHOHELA.....6TH RESPONDENT

JUDGMENT

Date of last Order..... 21/12/2015

Date of Judgment..... 29/12/2015

Shangwa, J.

This is an appeal against the decision of the District Court of Kinondoni in Civil Cause No. 14 of 2011 in which it was decided that it was wrong for the plaintiff/Appellant to sue the defendants/Respondents in their individual capacity instead of

suing Sinza 'D'. CCM Branch for compensation of his properties which were seized by the defendants/Respondents.

The back ground to the dispute between the parties is laid down at paragraph 1 of the District Court's typed ruling by Makabwa, RM where he wrote as follows and I quote:-

"The brief back ground to this dispute is that the plaintiff John Boaz has filed a suit in this court claiming for return of his properties amounting to Tshs. 85,958,000/= being compensation of the actual price of the property which the defendants jointly and severally seized from the plaintiff."

Looking at paragraph 4 of the plaintiff/Appellant's plaint, it is stated that on 7th April, 2011, the defendants jointly and severally trespassed to the plaintiff's shop located at Sinza 'D' and

unlawfully broke the shop, seized and confiscated the plaintiff's properties valued at Tshs. 85,958,000/=.

It is not in dispute that the seizure of the Appellant's properties was made by the Respondents in the course of evicting the Appellant from the CCM premises at Sinza 'D' which he used to rent for business purposes.

It is quite clear that the defendants/Respondents evicted the plaintiff/Appellant from CCM premises at Sinza 'D' as CCM agents or employees and not as individuals. Therefore, in my view, the District Court of Kinondoni did not err in holding that the Appellant was required to sue CCM Sinza 'D' Branch.

In his written submissions, counsel for the Appellant contended that as CCM Sinza 'D' Branch is not a corporate body nor a natural person capable of being sued in its own name except the registered Trustees of CCM, the District Court of

Kinondoni erred in holding that the Appellant was required to sue CCM Sinza 'D' Branch.

As I have already said, the District Court of Kinondoni did not err in holding that the Appellant was required to sue CCM Sinza 'D' Branch. In my opinion, although CCM Sinza 'D' Branch is not a corporate body and is not a registered Trustees of CCM, it was capable of being held responsible for the seizure and confiscation of the plaintiff's/ Appellant's properties after failing to pay rent of its premises "Mabandas".

Furthermore, counsel for the Appellant contended that the preliminary objection which was entertained by the trial court was not based on a point of law but that it was based on pure matters of fact that required to be proved by evidence during trial. For instance, he said, the question as to whether the defendants/Respondents acted on their own will or under the

instruction of their employer i.e CCM Sinza 'D' Branch is a matter which required to be proved at the hearing of the main suit.

In my view, the preliminary objection against the suit which was raised by the defendants/ Respondents was based on pure point of law that they were wrongly sued by the plaintiff / Appellant instead of suing CCM Sinza 'D' Branch. Always, the law requires a litigant to sue a right party. The question as to whether the defendants /Respondents acted under the instructions of CCM Sinza 'D' Branch required no proof during trial as it is common knowledge that the defendants/Respondents acted under the instructions of CCM Sinza 'D' Branch to evict, seize and confiscate the Appellant's properties for his failure to pay rent of its "Mabandas".

For these reasons, I dismiss this appeal with costs.

A. Shangwa

JUDGE

29/12/2015

Delivered in open court this 29th day of December, 2015 in the presence of Mr. Kunambi for the Respondents and in the absence of the Appellant.

A. Shangwa

JUDGE

29/12/2015